IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.398 Of 1999.

Ram Gopal Sharma

Versus

The Oriental Fire & General Insurance Company Limited, New Delhi & Another

Date Of Order ::: 26.10.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. C.P. Sharma, Counsel for plaintiff-appellant.
Mr. Man Singh and
Mr. Pradeep Singh, Counsel for defendant-respondents

By the Court :

Heard learned counsel for both the parties.

The plaintiff-appellant filed a suit for declaration to the effect that he tendered his resignation dated 30.04.1981 to resign from service with effect from 29.05.1981, but he withdrew the said application dated 30.04.1981 on 12.05.1981 much before effective date, but his resignation was accepted vide

order dated 22.05.1981, therefore, he prayed that the orders dated 15.05.1981 and 22.05.1981 may be declared as null and void.

Learned Lower Court decreed the suit of the plaintiff and declared the orders dated 15.05.1981 and 22.05.1981 as illegal and void. It was directed that the plaintiff will be entitled to remain in service, but he will not be entitled to receive any monetarial benefits for the period he remained in service of another employer namely the New Bank of India. Being aggrieved with the same, the defendants filed an appeal before the First Appellate Court.

The plaintiff-appellant filed cross-objection to the effect that the moneterial benefits, which have not been awarded for the period, he remained in service of New Bank of India should have been allowed or at least the difference of amount, which he would have received from the defendant-insurance-company and he actually received the salary from the New Bank of India, should be allowed.

Learned First Appellate Court dismissed the appeal of the defendants as well as cross objection filed by the plaintiff, both vide impugned order dated

17.04.1998.

Learned counsel for the plaintiff-appellant contended that his cross objection has wrongly been rejected by the First Appellate Court, whereas he was entitled to difference of amount for the period he remained in service of the New Bank of India. In this connection, it is relevant to mention here that the First Appellate Court in para No.11 of its judgment has observed that the plaintiff-appellant did not mention this fact in the plaint that after acceptance of his resignation, he was appointed in the New Bank of India and he received his salary and he is entitled for the difference of amount, in case the suit of the plaintiff is decreed. After considering the submissions of plaintiff, the First Appellate Court dismissed the cross objection of the plaintiff.

I have considered the submissions of learned counsel for both the parties in the light of the observations and the findings of the First Appellate Court and I do not find any illegality or perversity in the same.

No substantial question of law is involved in this second appeal and the same is accordingly

dismissed at the admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.